

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN TELCOM SERVICES)
COMPANY INC.)

DOCKET NO. 2007-0423

For Approval to Expand Its)
Certificate of Authority.)
_____)

DECISION AND ORDER NO. 24114

Filed March 31, 2008

At 10 o'clock A.M.

Karen Higashi.

Chief Clerk of the Commission

RECEIVED

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii

Karen Higashi.

¹See In re Paradise MergerSub, Inc., et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005 ("Decision and Order No. 21696").

and a certificate of registration to provide intrastate resold wireless telecommunications services (also known as commercial mobile radio services)² in the State.

Applicant is a wholly-owned subsidiary of Hawaiian Telcom Communications, Inc. ("HT Communications") and an affiliate of Hawaiian Telcom, Inc. ("Hawaiian Telcom"). Hawaiian Telcom is the incumbent local exchange carrier ("ILEC") in the State, providing local and intraLATA telecommunications services in Hawaii on a statewide basis.

A.

Applicant's Request

On December 26, 2007, Applicant filed an application seeking to expand its existing COA to allow Applicant to provide facilities-based intrastate telecommunications services throughout the State ("Application").³ The Application was filed pursuant to HRS §§ 269-7.5 and 269-16 and HAR §§ 6-80-17 and

²See In re Hawaiian Telcom Services Company, Inc., Docket No. 05-0097, Decision and Order No. 21892, filed on June 24, 2005.

³Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex-officio party to all proceedings before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

6-80-18.⁴ Moreover, to the extent applicable, Applicant requests waiver of any filing requirements under HRS chapter 269 and HAR chapters 6-61 and 6-80 (e.g., HAR §§ 6-61-74, 6-61-75, and 6-80-17(c)), pursuant to HRS § 269-16.9(e) and HAR § 6-80-135 ("Waiver Request").

Through its expanded authority, Applicant plans to provide inter-island long distance message and private line services. Applicant also intends to provide residence and business access line services and service packages that may bundle access line, custom calling features, operator services, and inter-island toll services.

Applicant asserts that it is financially fit to render the proposed services. As evidence, Applicant incorporates by reference its unaudited financial statements filed with the commission on April 2, 2007, pursuant to HAR § 6-61-76.⁵ Applicant contends that its management team and other personnel "have extensive technical and managerial experience and expertise in providing both resold and facilities-based telecommunications

⁴On January 18, 2008, notice of the filing of the Application (the "Notice") was published in The Garden Island, Hawaii Tribune-Herald, Maui News, West Hawaii Today, and Honolulu Star-Bulletin. The Notice invited interested persons intending to intervene or participate in this proceeding to file motions to do so within 20 days of the date of the publication (i.e., by February 7, 2008). No persons moved to intervene or participate without intervention in this proceeding.

⁵Moreover, consistent with HAR § 6-80-17(c)(1)(C) and 6-61-76, Applicant incorporates by reference its tariffs currently on file with the commission governing its existing resold telecommunication services in the State, which Applicant intends to utilize to also govern its proposed facilities-based telecommunications services ("Proposed Initial Tariff").

services in the State."⁶ Moreover, Applicant represents that it is fit, willing, and able to render the proposed services and conform to the commission's terms, conditions, and rules for service.

Applicant maintains that granting it authority to provide facilities-based services would further the public interest by expanding the availability of competitive telecommunications in the State. In particular, Applicant contends that its entrance in the facilities-based market "will provide Hawaii customers with additional access to new and innovative telecommunications technologies and service choices, and may allow these customers to achieve increased efficiencies and cost savings."⁷ Applicant asserts that the public as a whole would "benefit both directly, through the use of these types of competitive services to be offered by Applicant, and indirectly, because the presence of Applicant in this market will increase the incentives for possibly other telecommunications carriers to operate more efficiently, offer new and innovative services, reduce their prices, and improve the overall quality of their services to the public."⁸

⁶See Application at 5.

⁷Id. at 6.

⁸Id.

B.

Consumer Advocate's Statement of Position

On January 16, 2008, the Consumer Advocate filed its Statement of Position ("CA's SOP") informing the commission that it does not object to Applicant's COA expansion request; provided that Applicant modifies its proposed tariff in accordance with the Consumer Advocate's recommendations set forth in Section II.D of its SOP.⁹ According to the Consumer Advocate, it accepts Applicant's representation that its key personnel possess the necessary technical and managerial abilities to provide the proposed services. In addition, the Consumer Advocate states that the requested expansion of Applicant's COA would be in the public interest. Specifically, the Consumer Advocate contends that entry of many telecommunications service providers in Hawaii's market serves to mitigate many traditional public utility regulatory concerns associated with the proposed requested expansion of Applicant's COA.

⁹On February 8, 2008, Applicant filed a response to the CA's SOP indicating that it does not object to the tariff revisions proposed by the Consumer Advocate as set forth in Section II.D of its SOP, subject to one clarification. Subsequently, by letter dated and filed on February 15, 2008, Applicant, upon further review and after conferring with the Consumer Advocate, modified its February 8, 2008 response by stating that it does not object to the Consumer Advocate's recommended tariff revisions in their entirety (i.e., without the noted clarification).

Moreover, the Consumer Advocate states that it is not opposed to Applicant's Waiver Request. As described more fully on pages 9-11 of its SOP, the Consumer Advocate asserts that: (1) Applicant is one of many authorized providers of telecommunications services in the State¹⁰; and (2) based on its review of Applicant's financial statements, Applicant is a non-dominant telecommunications carrier in the State¹¹; thus, the Consumer Advocate concludes that if Applicant's request is approved, it would have minimal, if any, impact on customers or market share.¹² Also, the Consumer Advocate notes that (1) Applicant is currently a non-facilities based reseller of telecommunications services in the State¹³; (2) expansion of Applicant's COA to include facilities-based services is in the public interest¹⁴; and (3) "existing competition in the current telecommunications market will continue to serve the same purpose as public interest regulation."¹⁵

¹⁰See CA's SOP at 9.

¹¹Id. at 9-10.

¹²Id. at 10.

¹³Id.

¹⁴Id. at 5-6.

¹⁵Id. at 10.

II.

Discussion

A.

COA

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a certificate of public convenience and necessity ("CPCN") from the commission.¹⁶ HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

In Docket No. 04-0140, the commission found that Applicant satisfied the requirements of HAR § 6-80-18(a) and granted Applicant a COA to provide telecommunications services in the State on a resold basis.¹⁷ Here, as in Docket No. 04-0140, the commission makes the following findings pursuant to HAR § 6-80-18(a):

¹⁶On June 3, 1996, HAR chapter 6-80 took effect. HAR 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

¹⁷See Decision and Order No. 21696 at 51.

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed facilities-based services, as evidenced by the qualifications of its management personnel and the financial statements referenced in support of its request.

2. Applicant is fit, willing, and able to properly perform the telecommunications services proposed and to conform to the terms, conditions, and rules prescribed or adopted by the commission, as evidenced by Applicant's representations and the documents submitted or referenced in support of its Application. Furthermore, the commission's grant of expanded authority to provide the facilities-based services will be conditioned upon Applicant's conformity to the terms, conditions, and rules prescribed or adopted by the commission as discussed below.

3. Applicant's proposed telecommunications services are in the public interest. The commission recognizes that additional facilities-based service providers in the State's telecommunications market would increase competition and provide consumers with additional options to meet their telecommunications requirements.¹⁸ Nonetheless, Applicant's close affiliation with Hawaiian Telcom, the State's ILEC, was a source of concern for the commission. In particular, the commission was

¹⁸Additionally, the Consumer Advocate notes, that "introduction of effective competition in the telecommunications industry is desirable to achieve the benefits that would not be present in a monopolistic environment. As such, the entry of additional service providers or expansion of the services they provide should further the goal of achieving effective competition in Hawaii's telecommunications market." See CA's SOP at 6.

uncertain how granting Applicant's request to provide facilities-based services in the State would impact Hawaiian Telcom. The commission's initial concerns on this matter; however, were addressed as discussed below.

In response to commission-issued information requests ("IRs"), Applicant contends that Hawaiian Telcom is currently facing competition from a number of telecommunications providers and technologies (e.g., competitive local exchange carriers ("CLECs"), interexchange carriers, wireless providers, and cable companies) and that this competition is resulting in significant losses in Hawaiian Telcom's access lines and associated revenues.¹⁹ According to Applicant, an expansion of its COA is not expected to result in any material change in the competition currently faced by Hawaiian Telcom; however, its ability to provide facilities-based services under an expanded COA could positively impact Hawaiian Telcom since it could result in revenues being retained by Hawaiian Telcom that otherwise would be lost to competitors since Applicant would more than likely use Hawaiian Telcom's underlying facilities to provide services.²⁰ As Applicant also states in its IR response, an expansion of its COA to provide facilities-based services would result in a similar arrangement to what was in place under Verizon Hawaii Inc. ("VH"), Hawaiian Telcom's predecessor, since a number of VH's affiliates were operating in the State as authorized CLECs,

¹⁹See Applicant's Responses to Public Utilities Commission's First Submission of Information Requests, filed on March 10, 2008, PUC-IR-2.

²⁰Id.

including Verizon Long Distance, Verizon Advanced Data Inc. ("VADI"), and Verizon Select Services Inc. The commission notes that in 2000, VADI was granted a COA to operate as a facilities-based carrier and reseller of intrastate telecommunications services while VH operated as the State's ILEC.²¹ The commission also recognizes that should Applicant and Hawaiian Telcom desire to transfer certain utility assets from Hawaiian Telcom to Applicant, in the future, the transaction would require prior commission approval under HRS § 269-19.²² Additionally, similar to the proceeding in Docket No. 00-0336, wherein VH sought commission approval to transfer intrastate advanced data services assets from VH to VADI, any transaction to transfer assets, at minimum, should be negotiated at arms-length and comply fully with all established

²¹See In re Bell Atlantic Network Data, Inc., nka Verizon Advanced Data Inc., Docket No. 00-0205, Decision and Order No. 18163, filed on October 27, 2000, as amended by Order No. 18176, filed on November 3, 2000.

²²HRS § 269-19 states the following:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added).

affiliate transaction rules and requirements.²³ Furthermore, as asserted by Applicant, grant of its request to provide facilities-based services in the State would allow Applicant to effectively compete with other CLECs operating in the State, which would benefit consumers through a greater selection of services and possibly lower prices. However, Applicant, Hawaiian Telcom, and HT Communications should be aware that the commission has the authority under HRS § 269-7(a) to scrutinize and examine, among other things, all of a public utility's financial transactions, its business relations with other persons, companies, or corporations, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."²⁴ Should the need arise the commission will not hesitate to exercise its various powers under HRS chapter 269.

Based on the foregoing, the commission concludes that Applicant's request for commission approval to expand its COA to provide facilities-based telecommunications services in the State should be granted.

²³The Federal Communications Commission's ("FCC") rules governing transactions between affiliates are set forth in 47 C.F.R. § 32.27. In general, the FCC requires that assets be recorded at no less than the higher of fair market value and net book cost if sold by or transferred from a carrier to its affiliate, while assets sold by or transferred to a carrier from its affiliate shall be recorded at no more than the lower of fair market value and net book cost.

²⁴See HRS § 269-7(a).

B.

Tariff Revisions

Upon review of the Consumer Advocate's recommended tariff revisions,²⁵ the commission finds them to be reasonable and appropriate. Hence, the commission fully adopts the Consumer Advocate's tariff revision recommendations. Accordingly, the commission concludes that Applicant's Proposed Initial Tariff (Hawaii P.U.C. Tariff No. 1 and Hawaii P.U.C. Tariff No. 2) should be revised as follows:

1. Hawaii P.U.C. Tariff No. 1, Original Page 1, Title Page; Hawaii P.U.C. Tariff No. 2, Original Page 8, Part I - Miscellaneous Services, Application of Tariff; Hawaii P.U.C. Tariff No. 2, Original Page 35, Part II - Long Distance, Application of Tariff. These sections should be revised: (a) to reflect Applicant's principal place of business which is currently incorrectly listed as 1001 Bishop Street, Pauahi Tower 18th Floor, Honolulu, Hawaii, 96813; and (b) by adding the following statement to clarify the application of the tariff in the event of a conflict with State law:

In the event of a conflict between any of the subject tariff provisions (including provisions governing the duty to defend, indemnification, hold harmless, and limitation of liability) and State of Hawaii law, State of Hawaii law shall prevail.

2. Hawaii P.U.C. Tariff No. 1, Original Page 7, Application of Tariff. Applicant should correct the opening paragraph that currently indicates that the tariff applies only to "non-facilities based" services since the tariff would also apply to "facilities-based" services.

²⁵The tariff revisions recommended by the Consumer Advocate are set forth in Section II.D of its SOP.

3. Hawaii P.U.C. Tariff No. 1, Original Page 11, Section 2 - Terms and Conditions; Hawaii P.U.C. Tariff No. 2, Original Page 11, Part I - Miscellaneous Services, Section 2 - Regulations; Hawaii P.U.C. Tariff No. 2, Original Page 38, Part II - Long Distance, Section 2 - Regulations. For consistency with HAR § 6-80-107(1), Applicant should publish in its tariff and on its bills a toll-free telephone number that can be used by customers 24 hours a day, 7 days a week, for the intake of complaints. Additionally, in accordance with HAR § 6-80-107(4), Applicant should publish somewhere in Section 2 the commission's address and telephone number in its tariff for customers who may want to call or write the commission. The following language, which could be located in a separate sub-section for "Complaints and Billing Disputes" within Section 2, is suggested:

All Customer complaints are subject to Hawaii Administrative Rules § 6-80-107. Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

Hawaiian Telcom Services Company, Inc.
[Applicant to provide address]
[Applicant to provide toll-free phone number]

All billing disputes are subject to Hawaii Administrative Rules § 6-80-102. Any objection to the billed charges should be reported promptly to the Company. Adjustments to Customer's bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate. Where over billing occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest or other compensation on the amount over billed. All Customer complaints and inquiries regarding service or billing

are subject to the jurisdiction of the Commission, which may be contacted at the following address and telephone number:

Hawaii Public Utilities Commission
465 South King Street, Room 103
Honolulu, HI 96813
(808) 586-2020

C.

Waiver Request

HRS § 269-16.9(e) allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Similarly, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, the commission finds, at this time, that Applicant is a non-dominant carrier in the State.²⁶ The commission also finds that the expansion of Applicant's existing COA is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the filing requirements of HRS chapter 269 and HAR chapters 6-61 and

²⁶This determination is based on our review of Applicant's financial statements filed with the commission on April 2, 2007, which Applicant incorporates by reference in this docket. Nonetheless, the commission does recognize that Applicant is an affiliate of Hawaiian Telcom.

6-80 (e.g., HAR §§ 6-61-74, 6-61-75, and 6-80-17(c)), with regards to the matters in this docket, should be waived, as applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.²⁷

III.

Orders

THE COMMISSION ORDERS:

1. Applicant's request to expand its COA to provide facilities-based intrastate telecommunications services in the State is granted. Thus, under its expanded COA, Applicant is now authorized to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State.

2. Applicant's request for waiver, to the extent applicable, of any filing requirements under HRS chapter 269 and HAR chapters 6-61 and 6-80 (e.g., HAR §§ 6-61-74, 6-61-75, and 6-80-17(c)), is granted pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

3. As a holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269; HAR chapters 6-80 and 6-81; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

²⁷The commission's waiver of the applicable filing requirements in this instance should not be construed by any public utility, including Applicant, as a basis for not adhering to the filing requirements for similar transactions that fall within the commission's purview.

4. Applicant shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant's tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

5. Applicant shall conform its tariff to all applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions referred to or set forth in Section II.B of this Decision and Order. An original and eight copies of Applicant's revised tariff shall be filed with the commission, and two additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariff.

6. Under its expanded COA, Applicant shall continue to pay a telecommunications relay service contribution established pursuant to: (A) HRS § 269-16.6; and (B) Decision and Order No. 23481, filed on June 7, 2007, in Docket No. 2007-0113.


7. If Applicant will own, operate, or maintain any subsurface installation as defined by HRS § 269E-2, it shall register as an operator and pay to the commission a one-time registration fee of \$350 for the administration and operation of the Hawaii One Call Center,²⁸ pursuant to Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195.

²⁸The Hawaii One Call Center may be contacted by telephone at (877) 668-4001.

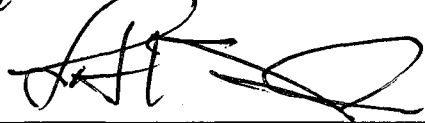
8. Failure to comply with the requirements set forth in paragraphs 3 to 7, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAR 31 2008.

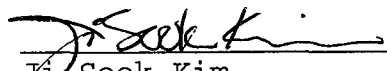
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2007-0423.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24114 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAR 31 2008